IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 3021 of 2007()

CC.48/1989 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL
CRA.154 OF 1991 OF THE SESSIONS JUDGE, THIRUVANANTHAPURAM

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REVN. PETITIONER: REVN. PETITIONER

SUKUMARAN ANIL KUMAR, S/O. SUKUMARAN,
NOW RESIDING AT P.O.BOX NO.430, PIN-130,
MASCUT, SULTANATE OF OMAN, FROM SATHI BHAVAN,
KORANI P.O., KEEZHUVILAM VIA., TRIVANDRUM DIST.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS: COMPLAINANT IN THE TRIAL COURT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No.3021 of 2007

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Dated, this the 16th day of August 2007

ORDER

The revision petitioner who is the 23 year old son of P.W.1 who at the relevant time was past 55 years, was charge-sheeted by the Sub Inspector of Police, Attingal in Crime No. 307 of 1988 for offences punishable under Sections 324 and 326 I.P.C.

2. The case of the prosecution can be summarised as follows:-

P.W.1 who is the father of the accused was making attempts to dispose of the properties purchased with the sale proceeds of his wife's properties and possessed by the accused and his mother (DW1) . The accused was opposed to the said move of P.W.1. On 19-12-1988 at about 10.30 a.m. P.W.1 attempted to demarcate three cents of the land out of the house property enjoyed by the family. Infuriated by the said act the accused attacked P.W.1 using the handle of a spade causing injuries including fracture of the ulna.

3. During the trial of the case, D.W.1 who is none other than the mother of the accused and the wife of P.W.1 gave evidence to the effect that the injuries were sustained by P.w.1 while making good his

escape after assaulting her.

3. On the side of the prosecution, 8 witnesses were examined as P.Ws 1 to 8 and 4 documents were marked as P1 to P4. The accused denied the incriminating circumstances put to him during his examination under Sec. 313 Cr.P.C. He examined his mother as D.W.1 and got marked the case diary contradictions as P.W3 as Ext.D1.

4. The learned Magistrate, after trial as per judgment dated 21-05-1991 convicted the revision petitioner for offences punishable under sections 324 and 326 I.P.C. No separate sentence was imposed for the offence punishable under Sec. 324 I.P.C. For the conviction under Sec. 326 I.P.C. the learned Magistrate, taking note of the fact that the accused is aged only 24 years and also taking note of the further fact that the mother had deposed against P.W1 imposed a lenient sentence of simple imprisonment for three months. On appeal preferred by the revision petitioner as Crl. Appeal 154 of 1991 before the 5th Addl. Sessions Court, Thiruvananthapuram, the lower appellate court dismissed the appeal confirming the conviction entered and the sentence passed against him. It is the said judgment which is assailed in this revision.

5. The conviction has been recorded by the courts below

after an evaluation of the oral and documentary evidence in the case and this Court sitting in the rarefied revisional jurisdiction will be loathe to interfere with the conviction r which is accordingly confirmed.

6. What remains for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. It is true that the alleged attack by the accused was on his own father P.W.1. But the cause for the attack was the attempt on the part of the father to dispose of a portion of the property acquired with the funds of his wife. Considering the bad antecedents of the father who had given more miseries to the mother of the accused as unfolded by the prosecution evidence I am of the view that the revision petitioner does not deserve penal servitude by way of incarceration and that interests of justice will be adequately met by directing the revision petitioner to suffer imprisonment till the rising of the court and to pay an appropriate compensation to P.W.1 the injured. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, he shall suffer imprisonment till the rising of the court and shall pay a fine of **Rs. 15,000/- (Rupees fifteen thousand only)** by way of compensation under Sec. 357 (3) Cr.P.C. within 45 days from today, failing which he shall suffer simple imprisonment for two months by

way of default sentence.

This revision is disposed of confirming the conviction entered but modifying the sentence imposed on the revision petitioner.

V. RAMKUMAR,
(JUDGE)

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